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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 31st May, 2021

Decided on: 5th July, 2021

+ **W.P.(C) 9053/2020 & CM APPLs. 29197-29198/2020,
30451-30452/2020, 30818/2020, 32098-32099/2020,
15301/2021**

DR. DIBYENDU MAZUMDAR

..... Petitioner

Through: Mr. Vikas Singh, Sr. Advocate with
Ms. Surbhi Mehta, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Chetan Sharma, ASG with
Mr. Ajay Digpaul, CGSC, with
Mr. Kamal R. Digpaul, Mr. Amit
Gupta, Mr. Vinay Yadav, Mr. Akshay
Gadeock & Mr. Sahaj Garg,
Advocates for UOI.

Mr. Chetan Sharma, ASG with
Ms. Aakanksha Kaul & Mr. Manek
Singh, Advocate for R-2/DCI.

Mr. Aniruddh Singh, Adv. for R-3.

Ms. Alankrita Sinha, Adv. for R-4.

Mr. Shailesh Madiyal, Adv. for
Applicant in CM APPL. 30451/2020.

Mr. Yoginder Handoo & Mr. Ashwin
Kataria, Advs. for Applicant in CM
APPL. 30818/2020.

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HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. By way of this petition under Article 226 of the Constitution of India, the petitioner challenges an order of the Union of India [“UOI”] dated 09.11.2020, by which his election to the post of the President of Respondent No. 2-Dental Council of India [“DCI”] was declared illegal and invalid, and the Vice-President was given charge as the President, DCI.

I. Facts

2. The petitioner is a dentist within the meaning of Section 2(e) of the Dentists Act, 1948 [“the Act”]. He was nominated as a member of the DCI by the State of West Bengal, under Section 3(e) of the Act, in the year 2010. He was thereafter elected to the post of President, DCI. On 21.05.2015, after the petitioner’s term as a member of the DCI under Section 3(e), he was elected as a member of the DCI under Section 3(d) of the Act from Teerthanker Mahaveer University, Moradabad, Uttar Pradesh.

3. However, by a communication dated 11.09.2019, the UOI restrained him from acting as President, DCI on the ground that he had attained the age of 65 years. On 07.10.2019, the UOI declined the DCI’s request to reconsider the direction contained in the letter dated 11.09.2019 and clarified that the Secretary, DCI was responsible for ensuring that members whose terms have ended do not continue in the DCI. Against the aforesaid communications dated 11.09.2019 and

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07.10.2019, the petitioner has filed a writ petition before the Calcutta High Court¹, which remains pending. In view of the position taken by the UOI, although without accepting its validity, the petitioner resigned from the post of President, DCI on 14.10.2019.

4. In the meanwhile, the petitioner claims to have been elected as a member of the DCI on 03.10.2019, representing the Respondent No. 3-Mahatma Gandhi University of Medical Sciences and Technology, Jaipur, Rajasthan [“MGU”]. According to the petitioner, he was co-opted as a member of the Dental Faculty of MGU on 16.08.2019. MGU thereafter constituted a Committee of Court to elect a member of the DCI under Section 3(d) of the Act. The petitioner was duly elected on 03.10.2019, and the DCI was informed of his election by MGU on 04.10.2019. This was forwarded by the DCI to the UOI on 07.10.2019.

5. Pursuant to the petitioner’s resignation as President, DCI, the Secretary, DCI circulated a preliminary agenda dated 29.10.2019, for a General Body Meeting dated 15/16.12.2019. The agenda included *inter alia* election to the post of President, DCI from amongst the members of the DCI, and induction of new members to the DCI. A list of members, as on that date, was also circulated. This included the name of the petitioner as a member under Section 3(d) of the Act from MGU. A final agenda was issued on 28.11.2019, including the agenda items mentioned above. Enclosed therewith was an updated list of members, consisting of 87 names. The petitioner’s name continued to be shown as a member under Section 3(d) of the Act from MGU.

¹ W.P. No. 21456(W) of 2019

6. By a notification dated 29.11.2019, the petitioner was also nominated as a member of the DCI by the Respondent No. 4-State of Chhattisgarh under Section 3(e) of the Act. The notification of the State of Chhattisgarh was forwarded by the DCI to the UOI on 09.12.2019, pursuant to a meeting of its Executive Committee held on 05.12.2019.

7. The General Body Meeting was held on 15.12.2019. 87 members, including the petitioner and two special invitees, were present. The second item of the agenda related to the introduction of new members who had joined after the last meeting of the DCI. 16 members were introduced. The petitioner's name finds place twice in that list, as his election by MGU under Section 3(d), and nomination by the State of Chhattisgarh under Section 3(e), had both taken place during the interregnum between the two meetings.

8. The sixth item on the agenda was the election to the post of President, DCI. The petitioner and one other candidate [Dr. Jaykara S.M.] were nominated for the post of President, DCI. 84 members voted, and the petitioner was declared elected. He secured 46 votes to 37 votes for Dr. Jaykara, one vote having been declared invalid.

9. After the election was concluded, between the period 24.12.2019 and 24.02.2020, the UOI received six complaints against the petitioner's election. It constituted a two-member committee ["the Committee"] on 06.01.2020 [reconstituted on 19.02.2020] to look into the said complaints. The petitioner was informed about the constitution of the Committee by a letter dated 13.07.2020 and was directed to give his response to the issues raised against his

candidature as a member as well as his election as President, DCI. The relevant contents of the said letter are extracted below:

“Subject: Constitution of Committee to examine the complaints/petitions under section 5 of the Dentists Act, 1948 in respect of the election of President, Dental Council of India (DCI).

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2. MoHFW has forwarded certain Complaints/Petitions made by Complainants/Petitioners namely Dr. Jayakar S M, Dr. Jayanta Kumar Dash, Dr. Shaji K Joseph, Dr. Sharad Kapoor, Dr. Puneet Batra and Shri Ashok Khandelwal. It is understood that the election of the President, DCI were held on 15.12.2019 in the 142nd Session of General Body Meeting of the DCI. In the said election, Dr. Dibyendu Mazumdar was elected as President, DCI. It is understood that feeling aggrieved, by the said election process and also the qualifications of the elected candidate, the present Complaints/ Petitions have been preferred by the aforementioned Complainants/Petitioners.

3. Therefore, you are hereby directed to give your reply to the issue raised against your candidature as member as well as President, DCI by Complainants/Petitioners namely Dr. Jayakar S M, Dr. Jayanta Kumar Dash, Dr. Shaji K Joseph, Dr. Sharad Kapoor, Dr. Puneet Batra and Shri Ashok Khandelwal. Respective complaints are attached herewith.”

10. The petitioner responded by a letter dated 20.07.2020.

11. The Committee submitted a report dated 04.09.2020 [“the Report”]. It has detailed the procedure followed by it in a section of

the Report entitled “Proceedings”. The material parts of the said section are reproduced below:

“4. All the complainants namely Dr. Jayakar SM, Dr. Jayanta Kumar Dash, Dr. Shaji K. Joseph, Dr. Sharad Kapoor, Dr. Puneet Batra and Shri Ashok Khandelwal were contacted through letter dated 02.07.2020 (Annexure-A10 to A15) for authenticating/ verifying their complaints and also to provide the relevant documents in support of their allegations.

5. The committee also decided to seek the comments of Secretary, DCI in this matter. The committee further decided that once the complainants verify their complaints, the committee would seek the response from Dr. Dibyendu Mazumdar, President elected of DCI whose candidature as President DCI as well as his primary membership in DCI is under challenge.

6. All the complainants in pursuance of their letter dated 02.07.2020 have verified their respective complaints (Annexure-A16 to A21) and also pressed the allegations levelled by them and supplied certain documents in support thereof.

7. The committee held its next meeting on 09.07.2020, wherein the committee scrutinized the responses of all the six complainants received in pursuance of said letter dated 02.07.2020 and found all the complainants have stood by the allegations which they made in their respective complaints. The committee further decided to seek reply from Dr. Dibyendu Mazumdar and also to examine the concerned officials from MoHFW on the next date. The Committee issued letter dated 10.07.2020 (Annexure-A22) to Dr. Nipun Vinayak, Joint Secretary, Ministry of Health and Family Welfare, requesting for written response on the queries and also for deputing officers to appear before the committee.

8. The committee next met on 16.07.2020. Shri Vidyadhar Jha, Under Secretary, MoHFW appeared

before committee alongwith the requisite records (Record is annexed as Annexure-A23) on behalf of MoHFW, in pursuance to letter dated. The committee perused the records submitted by Shri Vidyadhar Jha and examined Shri Vidyadhar Jha by recording his statement in question answer form (Annexure-A24). The committee also decided to seek the response from Secretary, DCI and to examine him in person on the issues. The committee decided to hold its next meeting on 28.07.2020 at 3:30 PM at Shastri Bhawan, New Delhi to examine Secretary, DCI in this matter. The Committee issued letter dated (Annexure-A25) to Secretary, DCI directing him to appear along with all the originals relevant files and details. Meanwhile the committee received the reply from Dr Dibyendu Mazumdar vide letter 20.07.2020 (Annexure-A26)

9. *The committee met on 28.07.2020; and perused the record (Record is annexed as Annexure-A27) submitted by Dr. Sabyasachi Saha Secretary, DCI. Dr. Sabyasachi Saha Secretary, DCI was examined in the matter and recorded his statement in question answer form (Annexure-A28). Due to paucity of time, examination could not be completed as it was already 06:00PM, thus, committee decided to adjourn the examination for the next date i.e. on 30.07.2020 at 2:30 PM. During examination on 28.07.2020, Dr. Sabyasachi Saha Secretary, DCI vide cover letter dated 29.07.2020 sent certain additional written response on behalf of DCI on certain points raised during the course of his personal appearance (Annexure-A29).*

10. *The scheduled meeting could not be held due to official exigencies on 30.07.2020. A D.O. No. V.12025/274/2019-DE dated 31.08.2020 (Annexure-A30) from Shri Nipun Vinayak, Joint Secretary, MoHFW received in the office of Shri Rajveer Singh Verma, Member, wherein it was mentioned that Hon'ble Minister expressed displeasure for extreme delay in the submission of the Report and desired that the inquiry Report may be*

submitted without delay and within 24 Hours i.e. by 01st September, 2020 positively. In this regard, it is stated that the committee has taken all expeditious steps to finalise its views, however due to certain factors as enumerated above which are beyond the control of the committee, the report is slightly delayed, the same is regretted and Hon'ble Minister may be apprised accordingly.

11. The committee held its next meeting on 02.09.2020, as Secretary, DCI shown his inability to attend the meeting on 31.08.2020 and 01.09.2020 due to his personal reasons i.e. out of town, concluded the examination of Secretary, DCI in the matter (Annexure-A31). Secretary, DCI vide cover letter dated 02.09.2020 submitted certain additional response on behalf of DCI on certain points during the course of personal appearance on 02.09.2020 (Annexure-A32).”

12. The Committee thereafter identified the following issues which it was required to consider:

“Issue (1)- Whether the Election dated 15.12.2019 for the Post of President, DCI was conducted in the prescribed manner? Further, as to whether the concurrence of the Central Government is required in finalization of the list of the members of DCI?

Issue (2)- Whether the Membership of Dr. Dibyendu Mazumder in terms of Section 3(d) of the Act from the MGUMST, Jaipur, Rajasthan is valid or not?

Issue (3) Whether the Membership of Dr. Dibyendu Mazumder in terms of Section 3(e) of the Act from the State Government of Chhattisgarh is valid or not?

Issue (4) Whether a person can hold the dual membership in the DCI?

Issue (5) Whether the person facing CBI inquiry can contest the Election for the Post of President DCI?”

13. For the reasons recorded in the Report, the Committee made the following recommendations:

“(a) It is recommended that The Dental Council of India (conduct of Election to the Post of President, Vice-President, Members of the Executive Committee) rules/regulations, may be finalized and notified after adopting due course, at the earliest, so as to avoid recurrence of such types of disputes in future, with respect to due compliance for Section 5 read with Section 2(g) of the Act.

(b) The nomination of Dr. Dibyendu Mazumdar under clause (d) of section 3 of the Act as a member of DCI is illegal and invalid on his attaining the age of 65 years on 09.07.2019.

(c) Keeping in view the fact that the provisional list of membership was said to be published by DCI on 29.10.2019 and election was held on 15/16 December, 2019 and no revision/amendment was made before the time of meeting of General Body in an electoral-roll and no representation was received in this regard questioning the membership of Dr. Mazumdar in this intervening period for his membership under section 3(e) of the Act and the fact that the Central Government may have to issue an appropriate order on merit on the validity of membership of Dr. Mazumdar under section 3 (e) of the Act, as made in the case of Dr. Jayakar S. M., (vide notification no. F.No. V.12025/231/2019-DE dated 28.10.2019), the Committee refrains to express any definite findings on this issue. It is not clear as to whether the aspect of Dr. Mazumdar regarding membership under-section 3 (e) of the Act was ever referred or not to the Central Government for its consideration by DCI or by the concerned State Government. However, the Committee is of the view that the Central Government may take an administrative decision, at appropriate level on this issue in the light of

policy, precedents and legal/factual position available with them.

(d) There is no bar/restriction in holding dual membership under two different clauses of section 3 of the Act, simultaneously as per rules and regulations of DCI. Committee, however, recommends suitable incorporation in rules/regulations likely to be framed in compliance of section 5 read with 2(g) of the Act with a view to check the practice of dual membership in DCI under section 3 of the Act.

(e) The Committee is of the view, that mere registration of an FIR/inquiry does not ipso facto disqualify a person from becoming member of the DCI and contesting election. It needs no re-iteration that a person is presumed to be innocent till he is proven guilty.”

14. Pursuant to the aforesaid Report, the UOI has issued the impugned order dated 09.11.2020, which is reproduced below:

“Whereas the Central Government received complaints/petitions under Section 5 of the Dentists Act, 1948 in respect of the election of President, Dr Dibyendu Mazumder, Dental Council of India (DCI) that was held on 15.12.2019;

And Whereas the Central Government in the Ministry of Health & Family Welfare constituted a Two-Member Committee vide Order dated 06.01.2020 (Committee reconstituted on 19.02.2020) to enquire into the complaints/petitions and give its report to the Ministry of Health & Family Welfare;

And Whereas the said Committee, after due enquiry, including examination of records and affording opportunity of hearing to Dr Dibyendu Mazumder, submitted their report to the Ministry on 04.09.2020;

And Whereas the said Committee held that the nomination of Dr. Dibyendu Mazumder under Clause (d) of Section 3 of the Act as a member of DCI is illegal on

account of his attaining the age of 65 years on 09.07.2019;

And Whereas the Committee noted that the provisional list of Members eligible for voting was published on 29.10.2019 and no revision/amendment appears to have been made in this electoral roll for the election scheduled for 15th December, 2019;

And Whereas the Report of the Committee was duly examined by the Ministry and further, the Ministry also examined the relevant records pertaining to the process of election of DCI President, held on 15.12.2019;

And Whereas the Ministry, on careful consideration of the Report of the Committee and material available on record, concluded the following:

(i) the membership of Dr. Dibyendu Mazumder under Clause (d) of Section 3 of the Dentists Act, 1948 is illegal;

(ii) there was illegality in the electoral roll used for the election of DCI President held on 15.12.2019, since certain members were nominated to DCI after the date of publishing of electoral roll i.e. 29.10.2019. Even the nomination of Dr. Dibyendu Mazumder under Clause (e) of Section 3 of the Dentists Act was also made after the publishing of the electoral roll;

(iii) the election process got further vitiated as one member, Dr Romesh Singh, nominated from Union Territory of Jammu and Kashmir voted in the said election; whereas the explanation to Clause (e) of Section 3 of the Act states that "State" does not include a Union Territory;

(iv) the due process for conduct of election was also not followed; since as per the DCI Regulations 1956, the Secretary, not less than 15 days before the Council meeting is to issue complete agenda paper showing the business to be brought before the Council meeting;

And whereas, in view of the above conclusions, considering the report of the two-Member Committee and examination of the matter in detail, it is proved beyond

doubt that the election of DCI President, Dr Dibyendu Mazumder, held on 15.12.2019 was vitiated and compromised;

Now therefore, the Central Government makes the following order:

(a) Election of President, Dental Council of India (DCI) held on 15.12.2019 is held illegal and invalid. Consequently, Dr. Dibyendu Mazumder ceases to be the President of the DCI with immediate effect;

(b) As per Regulation 35 of the DCI Regulations, 1956, the Vice-President, DCI, is given the charge of President of DCI;

(c) DCI may immediately frame Regulations for providing manner of election of President/Vice President;

(d) Fresh election for the post of President, DCI be conducted.”

II. Relevant statutory provisions

15. Before advertng to the submissions of the parties, the relevant provisions of the Act and the Dental Council (Election) Regulations, 1952 [“the Regulations”] may be noticed.

A. Extracts of the Dentists Act, 1948

“3. Constitution and composition of council.-The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely:-

(a) one registered dentist possessing a recognised dental qualification elected by the dentists registered in Part A of each [State] register;

(b) one member elected from amongst themselves by the members of the Medical Council of India;

[(c) not more than four members elected from among themselves, by-

(a) Principals, Deans, Directors and Vice-Principals of dental colleges in the States training students for recognised dental qualifications:

Provided that not more than one member shall be elected from the same dental college;
(b) Heads of dental wings of medical colleges in the States training students for recognized dental qualifications;]
(d) one member from each University established by law in the States which grants a recognized dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the court, from amongst the members of the Dental Faculty of the University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof;
*(e) one member to represent [each State ***] nominated by the Government of each such State from among persons registered either in a medical register or a dental register of the State;]*
[Explanation.- In this clause, "State" does not include a Union territory;]
(f) six members nominated by the Central Government, of whom at least one shall be a registered dentist possessing a recognised dental qualification and practising or holding an appointment in an institution for the training of dentists in a [Union territory] and at least two shall be dentists registered in Part B of a [State] register;
[(g) the Director General of Health Services, ex officio;]

Provided that pending the preparation of registers the [State] Governments may nominate to the first Council members referred to in parts (a) and (e) and the Central Government members referred to in part (f) out of persons who are eligible for registration in the respective registers and such persons shall hold office for such period as the

[State] or Central Government may, by notification in the Official Gazette, specify.

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5. Mode of elections.-Elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Central Government whose decision shall be final.

6. Term of office and casual vacancies.-(1) Subject to the provisions of this section an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer: [Provided that a member nominated under clause (e) or clause (f) section 3, shall hold office during the pleasure of the authority nominating him.]

7. President and Vice-President of Council.-(1) The President and Vice-President of the Council shall be elected by the members thereof from among themselves: Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the functions of the President:

Provided further that for five years from the first constitution of the Council, the President shall, if the Central Government so decides, be a person nominated by the Central Government, who shall hold office during the pleasure of the Central Government, and where he is not already a member, shall be a member of the Council in addition to the members referred to in section 3.

(2) An elected President or Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as member of the Council, but subject to his being a member of the Council, he shall be eligible for re-election.

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20. Power to make regulations.-

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(2) In particular and without prejudice to the generality of the foregoing power such regulations may-

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(b) prescribe the manner in which elections under this Chapter shall be conducted;

xxxx xxxx xxxx”

B. Regulation 20, Dental Council (Election) Regulations, 1952

“20. Procedure for setting aside election.-(1) Before setting aside an election under Section 5, the Central Government shall give an opportunity to all the parties concerned to show cause why the election should not be set aside.

(2) A decision under section 5 may be given on the inquiry and report of any person appointed by the Central Government in that behalf.”

III. Submissions

16. Mr. Vikas Singh, learned Senior Counsel, advanced arguments on behalf of the petitioner. Mr. Chetan Sharma, learned Additional Solicitor General, appeared on behalf of both, the UOI and the DCI. Mr. Shailesh Madiyal, learned counsel, appeared on behalf of Dr. Jaykara, who has filed an application for intervention² in these proceedings, and supported the contentions advanced by the learned ASG. Although intervention applications have been filed by certain other parties also, they are broadly in support of the principal parties. No other counsel sought to make independent submissions.

² CM APPL. 30451/2020

A. Submissions on behalf of the petitioner

17. Mr. Singh assailed the impugned order of the UOI both on the ground that it was in breach of the principles of natural justice, and on merits.

18. With regard to the principles of natural justice, Mr. Singh submitted at the outset that the procedure adopted by the UOI was contrary to Regulation 20 of the Regulations, inasmuch as the petitioner was not given a proper show cause notice prior to the impugned order. Referring to the communication dated 13.07.2020 addressed by the Committee to the petitioner, Mr. Singh contended that the petitioner was never informed of the consequences contemplated by the UOI, and the aforesaid letter therefore does not assume the character of a show cause notice. He relied *inter alia* upon the judgment of the Supreme Court in *Gorkha Security Services vs. Government (NCT of Delhi) and Others*³ in this connection. Mr. Singh also urged that, on a proper interpretation of Regulation 20, the show cause notice was required to be issued subsequent to the inquiry and report obtained under Regulation 20(2), and prior to the UOI taking a decision in the matter.

19. The second limb of the petitioner's challenge on the ground of natural justice is that he should have been given an opportunity of personal hearing. Although, by way of the aforesaid communication dated 13.07.2020, the petitioner was asked to submit his written response to the allegations against him, he was not given an

³ (2014) 9 SCC 105

opportunity to appear personally either before the Committee, or before the concerned officer of the UOI.

20. On the merits of the case, Mr. Singh submitted that the petitioner was a member of the DCI under both Sections 3(d) and 3(e) of the Act. He contended that such dual membership is valid, as held by this Court in *R.K. Bali vs. Union of India*⁴ and by the Madras High Court in *Dr. George Paul vs. Union of India*⁵. In any event, Mr. Singh pointed out that the Committee had rendered a conclusion in favour of the petitioner on this point, which has remained uncontroverted even in the impugned order. He drew my attention to Section 5 of the Act to contend that the nomination of the petitioner under Section 3(e) was not even a matter within the jurisdiction of the UOI under Section 5.

21. Mr. Singh further submitted that, even under Section 3(d) of the Act, the petitioner's election by MGU was valid as the petitioner was a member of the Dental Faculty within the meaning of the constituting statute enacted by the State of Rajasthan⁶. He submitted that the petitioner has been duly co-opted as a member of the Faculty, but is not a regular teacher, and is thus not subject to any prescribed maximum age limit. Mr. Singh argued that neither the Act nor the Regulations stipulate a maximum age limit, either for election as a member of the DCI under Section 3(d) of the Act, or as its President under Section 7 thereof, rendering the impugned order legally baseless.

⁴ C.W.P. No. 4854 of 1997, decided on 02.01.2000

⁵ W.P. No. 5102 of 2010, decided on 04.10.2010

⁶ The Mahatma Gandhi University of Medical Sciences and Technology, Jaipur Act, 2011

22. With regard to the proceedings of the meeting held on 15.12.2019, Mr. Singh submitted that all the new members elected/nominated during the interregnum after the last meeting were introduced at the beginning of the meeting, incidentally, including Dr. Jaykara. He pointed out that none of the members present, including the representatives of the UOI itself, objected to the newly introduced members exercising their votes. Mr. Singh cited the judgment of this Court in *R.K. Bali*⁷ to contend that in such circumstances, no objection could later be taken to the votes cast.

B. Submissions on behalf of the respondents

23. Mr. Sharma, at the outset, raised the preliminary objection that the present petition raises disputed questions of fact which cannot be appropriately adjudicated in a writ petition.

24. With regard to the petitioner's challenge on the ground of natural justice, Mr. Sharma submitted that the inquiry undertaken by the UOI prior to the issuance of the impugned order was an extensive and elaborate exercise during the course of which notice was issued to the petitioner and his contentions were considered.

25. Mr. Sharma contended that the petitioner's reliance upon Regulation 20 is misplaced as the said provision finds place in Chapter II of the Regulations, which is entitled "*Elections to the Council under Clause (a) of Section 3*". As the petitioner's disputed election was not under Section 3(a), but Section 3(d), the learned ASG referred to the applicable provisions of Chapter V of the Regulations, which contains no procedural stipulation similar to Regulation 20. He submitted that

⁷ Supra (note 4)

the judgment in *Gorkha Security*⁸, cited by Mr. Singh, itself recognizes that principles of natural justice may be excluded expressly or by implication. According to the learned ASG, the placement of Regulation 20 in Chapter II of the Regulations, which deals only with elections under Section 3(a), and its exclusion from the chapters dealing with elections under other clauses of Section 3, constitutes an implied exclusion of the principles of natural justice in the present case.

26. In such circumstances, Mr. Sharma commended a flexible approach to the principles of natural justice, including consideration of the prejudice caused to the petitioner. In this connection, he cited the judgments of the Supreme Court in *State of U.P. vs. Sudhir Kumar Singh and Others*⁹ and *Karnataka State Road Transport Corporation and Another vs. S.G. Kotturappa and Another*¹⁰. He submitted that there was no requirement of a personal hearing in the facts and circumstances of the case and, seen holistically, the conduct of the UOI demonstrated sufficient compliance with the principles of natural justice.

27. In response to Mr. Singh's argument that the communication of the UOI dated 13.07.2020 could not be regarded as a show cause notice as it did not state the consequences contemplated, the learned ASG submitted that the aforesaid letter clearly mentions that a committee has been constituted under Section 5 of the Act to consider the complaints made against the petitioner's candidature as a member

⁸ Supra (note 3), paragraph 29

⁹ 2020 SCC Online SC 847 [Civil Appeal No. 3498/2020 decided on 16.10.2020]

¹⁰ (2005) 3 SCC 409 [paragraph 24]

and as President, DCI. The complaints had also been attached with the said letter. The petitioner's response dated 20.07.2020, according to the learned ASG, makes it amply clear that he was aware of the nature of the complaints and the consequences which would ensue if he failed to show cause.

28. On the substantive issue with regard to the petitioner's election under Section 3(d) of the Act, the learned ASG submitted that the applicable Regulations of the DCI¹¹ do not permit appointment of a person over 65 years of age as a member of faculty in a dental college. According to him, this has been upheld by the Punjab and Haryana High Court in *Rattan Lal Jain vs. UOI and Others*¹². On this reasoning, Mr. Sharma argued that the petitioner [who is admittedly over 65 years of age] could not have been appointed as a member of the Dental Faculty at MGU, and consequently was not eligible for election under Section 3(d) of the Act.

29. The learned ASG further submitted that the petitioner's election was not by the Court or Senate of the University as required by Section 3(d), but by a Committee of the Court, and the petitioner would, therefore, not be eligible for membership, even disregarding the question of his age. He also submitted that the petitioner had not challenged the Report and was, therefore, bound by its decision that the petitioner's election under Section 3(d) was illegal.

30. With regard to the petitioner's nomination under Section 3(e) of the Act by the State of Chhattisgarh, the learned ASG argued that the

¹¹ Note 7 under Clause 17 of the Master of Dental Surgery Course Regulations, 2017

¹² C.W.P. No. 22728/2011 decided on 05.05.2014

Act does not provide for dual membership under different clauses of Section 3. He submitted, in the alternative, that the petitioner's nomination under Section 3(e) had not been duly notified by the UOI, rendering him incompetent to stand for election to the post of President, DCI.

31. The learned ASG's final submission on merits concerned the conduct of the election for the post of President, DCI held on 15.12.2019. According to him, the election was vitiated by the fact that several persons who had become members of the DCI only after the notification of the election [by circulation of the Secretary's notice dated 29.10.2019] were permitted to vote. The learned ASG submitted that the voters' list stood frozen prior to the date of election, and members who had been inducted thereafter could not have exercised their franchise.

32. The learned ASG lastly urged that the extraordinary equitable remedy provided under Article 226 of the Constitution ought not to be exercised in favour of a candidate such as the petitioner who has already served as President, DCI for ten years. According to him, the writ petition is an effort to perpetuate the dominance of the petitioner over the DCI, an endeavour which ought not to be countenanced by the writ court. The learned ASG further submitted that the present petition does not involve any question of public interest and is only an attempt by the petitioner to retain his grip over the DCI without giving an opportunity of service to the several thousands of dentists available on its rolls.

33. It may be mentioned that, during the course of hearing, the UOI and the DCI filed additional documents on 17.05.2021 [under Diary No. 384179/2021]. However, at the hearing held on 18.05.2021, it transpired that the said documents pertained to communications/directions which had been stayed by an order of the Rajasthan High Court in *Pacific Medical University vs. Union of India and Others*¹³. The learned ASG, therefore, withdrew reliance upon the aforesaid documents.

C. Submissions on behalf of the petitioner in rejoinder

34. In response to the arguments advanced by the learned ASG, Mr. Singh submitted that in disputes relating to elections, the respondent-authorities are bound by the statutory scheme, and other restrictions as to term, age limit etc. cannot be read into the electoral process. He cited the decision of the Supreme Court in *Jyoti Basu and Others vs. Debi Ghosal and Others*¹⁴ in support of the submission that equitable considerations have no role to play in the adjudication of electoral disputes.

35. Mr. Singh further submitted that Regulation 20, on its face, applies to all disputes being decided under Section 5 of the Act, and its placement in Chapter II which pertains to disputes relatable to Section 3(a), ought not to govern its proper interpretation. He urged a purposive reading of the provision, regardless of the heading of the chapter in which it finds place. For this purpose, Mr. Singh relied upon the judgment of the Supreme Court in *Sarah Mathew vs. Institute*

¹³ Order dated 19.03.2021 in S.B. Civil Writ Petition No. 1687/2021

¹⁴ (1982) 1 SCC 691 [paragraph 8]

*of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and Others*¹⁵. He submitted that a proper interpretation of Regulation 20 requires the Court to import the requirements of principles of natural justice into all disputes being decided under Section 5.

36. On the substance of the impugned order, Mr. Singh reiterated that the UOI's role under Section 5 is limited to adjudication under those clauses of Section 3 which provide for elections. He therefore submitted that the nomination of the petitioner by the State of Chhattisgarh under Section 3(e) was not a matter within the jurisdiction of the UOI at all. He referred to paragraph 6(iii) of the common counter affidavit of the UOI and the DCI to submit that the respondents also recognised that the petitioner's membership under Section 3(e) is not in issue in the present case. In any event, Mr. Singh refuted the learned ASG's submission that the petitioner's nomination under Section 3(e) has not been duly notified. He argued that a nomination under the said provision is valid even in the absence of a notification, as held in the judgment of this Court in *Dr. V.K. Prajapati vs. Union of India and Others*¹⁶.

37. On the validity of the petitioner's dual membership of the DCI, Mr. Singh reiterated that the Report had found in the petitioner's favour on this point, a finding which remained undisturbed in the impugned order.

38. Mr. Singh further submitted that, as far as the petitioner's election under Section 3(d) is concerned, the impugned order proceeds

¹⁵ (2014) 2 SCC 62 [paragraphs 45-47]

¹⁶ W.P.(C) 9982/2017, decided on 13.11.2017

only upon the petitioner having crossed the age of 65 years and not upon the question of whether or not he was elected by the Court or the Senate of the University.

39. Mr. Singh also disputed the respondents' contentions regarding the conduct of the elections to the post of President, DCI. He contended that the electoral rolls published on 29.10.2019 and 28.11.2019 were provisional rolls, subject to revision at the time of election. The petitioner and other recently inducted members of the DCI, having been validly introduced in the meeting held on 15.12.2019, and accepted without objection, could not have been disenfranchised on this ground.

IV. Analysis

A. Objections as to the maintainability of the writ petition

40. Turning first to the objection of the learned ASG that the present writ petition raises disputed questions of fact, it may be noted at the outset that this question is not one of jurisdiction under Article 226 of the Constitution, but of whether such discretionary jurisdiction should be exercised in the given set of circumstances. The position that, in an appropriate case, the writ court can adjudicate factual disputes, and even call for oral evidence, is well settled.¹⁷ This jurisdiction, however, is to be sparingly exercised, and limited to exceptional cases.

41. In the present case, I find that the facts are largely undisputed. The parties have joined issue only on the legal consequences of the

¹⁷ Recent authority on this point is to be found in *Popatrao Vyankatrao Patil vs. State of Maharashtra and Others* (2020) SCC Online 291.

factual position, both with regard to natural justice and the validity of the conclusions arrived at by the UOI. The impugned order has been passed by the UOI in exercise of a specific statutory power and has the effect of curtailing the petitioner's discharge of the office of President, DCI to which he claims to have been elected. Having regard to the nature of the impugned order and the scope of the questions which arise for adjudication, I am not inclined to reject the petition on this ground, and relegate the petitioner to civil remedies.

42. In his closing submissions, the learned ASG also argued that the discretionary and equitable jurisdiction of the Court under Article 226 of the Constitution ought not to be exercised in favour of the petitioner, who has already held office as President, DCI for ten years. He submitted that the petition is motivated by a desire to perpetuate the petitioner's dominance over the DCI, rather than to vindicate genuine grievances. The learned ASG submitted that the age limit on membership of the DCI under Section 3(d) of the Act sought to be imposed by virtue of the impugned order is in public interest.

43. I am unable to accept this contention of the learned ASG. The rights of parties in an election dispute have to be adjudicated strictly in accordance with the prevailing statutory scheme. In the context of an election under the Representation of the People Act, 1951, the Supreme Court in *Jyoti Basu*¹⁸ held that:

“An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies ...

¹⁸ Supra (note 14), paragraph 8

Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket.”

Although the aforesaid decision was rendered in the context of a petition challenging an election to the Lok Sabha, it has been applied even in the context of elections of a cooperative society in *Vipulbhai M. Chaudhary vs. Gujarat Cooperative Milk Marketing Federation Ltd. and Others*.¹⁹ The qualification of the petitioner to participate in the election under the Act, and the conduct of the election, must therefore be governed by the statutory scheme. The Court cannot overlay its policy preferences with regard to age limits, term limits etc. into the statutorily prescribed qualifications and disqualifications.

B. Interpretation of Regulation 20 of the DCI (Election) Regulations, 1952

44. Regulation 20²⁰ clearly provides for a show cause notice to be issued to the concerned party prior to setting aside of an election under Section 5. Under Regulation 20(2), the decision taken under Section 5 may be based upon the inquiry and report of any person appointed by the Central Government in that behalf.

45. As recorded above, learned counsel for the parties differed on the point as to whether the aforesaid Regulation applies to an election under Section 3(d) of the Act, such as that of the petitioner. Mr.

¹⁹ (2015) 8 SCC 1 [paragraphs 1 and 45]

²⁰ Set out in paragraph 15 above.

Singh's contention, based upon a plain reading of the provision, was that it would apply to all disputes under Section 5 of the Act. However, the learned ASG argued to the contrary, relying upon the placement of Regulation 20 in Chapter II, which deals with elections under Section 3(a) alone. He pointed out that elections under Section 3(d) of the Act, in contrast, are dealt with under Chapter V of the Regulations, which contains no such provision.

46. I am of the view that the contention advanced by Mr. Singh in this regard deserves to be accepted. Regulation 20, on its plain terms, applies to the procedure for setting aside an election under Section 5. The text of the Regulation does not *per se* restrict its applicability only to disputes under Section 5 which are referable to elections under Section 3(a). Section 5 of the Act, in turn, prescribes that elections under Chapter II of the Act shall be conducted in the prescribed manner and wherever any dispute arises regarding any such election, it will be referred to the Central Government and its decision shall be binding. The proceedings in the present case have admittedly been taken under the aforesaid provision. The placement of Regulation 20 in Chapter II of the Act appears to be an inadvertent error, and in any event of little legal consequence. The decision of the Supreme Court in *Sarah Mathew*²¹ lays down that headings of chapters, sections or groups of sections have a limited role to play in construction of statutes. They can only be treated as general indicators but would not control an otherwise clear statutory mandate. The Court cited its

²¹ Supra (note 15), paragraph 47

earlier decision in *M/s Frick India Ltd. vs. Union of India and Others*²² wherein it was specifically held that section headings cannot be used to cut down the plain meaning of the words in a provision. In the present case, I find no ambiguity in the text of Regulation 20 which would require a reference to the chapter heading to determine its scope. There is no warrant for adopting an interpretation directly contrary to the plain reading of the statutory provision.

47. The aforesaid interpretation is also consistent with a reasonable and constitutional interpretation of the Regulations. Reference to Section 3 of the Act would demonstrate that the DCI consists of both elected members and nominated members. Elections are held under four different clauses of Section 3.²³ Nominated members are included in the DCI by virtue of clauses (e) and (f) of Section 3.²⁴ The Director General of Health Services is also an *ex-officio* member of the DCI. The interpretation of the Regulations advanced by the learned ASG would imply that a show cause notice must be issued when an election under Section 3(a) is challenged, but not otherwise. I do not find any justification for treating a dispute concerning an election under Section 3(a) any differently from a dispute concerning elections under sub-sections (b), (c) or (d) of the same section. A classification of this nature would be vulnerable to a challenge on the grounds of arbitrariness and unreasonableness, and such an interpretation should

²² (1990) 1 SCC 400, [paragraph 8]

²³ Section 3(a) [from amongst dentists registered in part A of the State registers], Section 3(b) [elected by members of the Medical Council of India], Section 3(c) [elected by heads of dental colleges and dental wings of medical colleges], Section 3(d) [elected by members of the Senates or the Courts of recognized universities].

²⁴ Nominees of State Governments and the UOI

therefore be avoided. The Court is obliged to prefer an interpretation of a statute or a subordinate legislation which renders it valid, rather than one which would render it constitutionally vulnerable. The observations of a two-judge bench of the Supreme Court to this effect in *Janani Sahoo vs. Chandra Sekhar Mohanty*²⁵ were expressly approved by the Constitution Bench in *Sarah Mathew*²⁶. A detailed enunciation of this principle can also be found in *State of Gujarat vs. R.A. Mehta*²⁷, wherein the Supreme Court held that a purposive interpretation, which supports the workability of a statute, would be preferred to one which makes it inept or futile.

48. In any event, the argument with regard to the applicability of Regulation 20 is, in my view, something of a red herring. The UOI was considering representations challenging the election of the petitioner to a statutory post. Compliance with the principles of natural justice, in these circumstances, was incumbent upon the UOI, regardless of the statutory provision. Our constitutional jurisprudence, as articulated in the judgment of the Supreme Court in *State of Orissa vs. Dr. Binapani Dei*²⁸ onwards, mandates adherence to the principles of natural justice whenever an administrative order has civil consequences upon a citizen, unless it is specifically excluded by statute, either expressly or by necessary implication. The said rule has been applied in diverse contexts, including *inter alia* provisions for

²⁵ (2007) 7 SCC 394

²⁶ Supra (note 15), paragraph 46

²⁷ (2013) 3 SCC 1 [paragraphs 96-98]

²⁸ (1967) 2 SCR 625

special audit of accounts²⁹, application of certain provisions of the Excise Manual,³⁰ and the declaration of wilful defaulters by banks.³¹ In my view, the issuance of a show cause notice was a minimum requirement before the petitioner could be denied the fruits of his electoral success.

49. I therefore hold that Regulation 20 applies to all disputes under Section 5 of the Act, and that, in any event, issuance of a show cause notice is required prior to setting aside an election under the said section.

50. The next argument advanced by Mr. Singh in this context was that Regulation 20, read as a whole, requires the UOI to issue a show cause notice *after* the conclusion of inquiry in terms of Regulation 20(2). As a general proposition, I do not find merit in this contention. The purpose of Regulation 20 is to ensure that the affected party has an adequate opportunity of hearing. Regulation 20(2), to the extent that it provides that a decision may be rendered by the Central Government, “*on the inquiry or report of any person appointed*” by it in that behalf, does not foreclose the procedure of issuance of notice by a committee so constituted. In the present case, the committee constituted by the UOI in terms of Regulation 20(2) consisted of two officers of the UOI itself – the Additional Secretary, Department of Legal Affairs and the Additional Deputy Director General of Health Services, Ministry of Health and Family Welfare. They conducted the

²⁹ Sahara India Firm (1) vs. Commissioner of Income Tax, Central-I and Another (2008) 14 SCC 151

³⁰ Kesar Enterprises vs. State of UP (2011) 13 SCC 733

³¹ State Bank of India vs. Jah Developers (2019) 6 SCC 787

inquiry and submitted a report to the UOI, following which the UOI issued the impugned order dated 09.11.2020. It would have to be examined on the facts of each case as to whether a fresh show cause notice was required to be issued. If the UOI merely considered the Report and accepted its findings, rendered after consideration of the response of the noticee, no further show cause notice may be mandated. The issuance of a show case notice is not a mere formality but reflects a substantive requirement that the noticee be treated fairly.

C. Was the communication dated 13.07.2020 a proper show cause notice?

51. The petitioner contends that the notice dated 13.07.2020 issued to him by one of the members of the Committee did not constitute a show cause notice, as it did not specify the consequences which the UOI contemplated in the event it was not satisfied with the cause shown by the petitioner. Mr. Singh relied upon the judgments of the Supreme Court in *Oryx Fisheries Private Limited vs. Union of India and Others*³² and *Gorkha Security Services*³³ in this connection. In *Oryx Fisheries*³⁴, the Court held that a show cause proceeding is meant to give the noticee a reasonable opportunity of making her objections against the allegations stated therein. The Court emphasized that, at the stage of show cause notice, the authority concerned must bear an open mind and not display any preconceived notions as to the truth of the allegations. In *Gorkha Security*

³² (2010) 13 SCC 427

³³ Supra (note 3)

³⁴ Supra (note 32), paragraph 24

*Services*³⁵, the Court held that a show cause notice is required to contain not just the imputations relating to the breaches or defaults by the noticee, but also the nature of the action proposed. In the context of a show cause notice for blacklisting of a service provider, the Court found that the latter requirement would enable the noticee to represent against the severity of the proposed action as well. The Court, however, added the following caveat:

*“We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”*³⁶

52. On facts, the Court determined that the appellant therein had not been put on notice regarding the contemplated action, and the order of blacklisting was, therefore, liable to be set aside. In coming to this conclusion, the Court noticed that the relevant tender document contemplated several possible penalties for the alleged infraction committed by the appellant, and blacklisting was not the only or inevitable consequence thereof. The Court however reiterated³⁷ that specific mention of the proposed action would not be required if it could be clearly inferred from the contents of the show cause notice.

53. Applying these principles to the present case, I am of the view that the notice dated 13.07.2020 issued to the petitioner satisfied the requirements of a show cause notice. The notice clearly referred to a dispute under Section 5 of the Act, which itself applies to disputes regarding elections under Chapter II of the Act. Further, the

³⁵ Supra (note 3), paragraphs 21 and 22

³⁶ Supra (note 3), paragraph 22

³⁷ Supra (note 3), paragraph 27

representations made to the UOI were also attached with the notice. It was clarified that the Committee was examining the complaints of the six complainants relating to the election of the petitioner as President, DCI, and the qualifications of the elected candidate. The fact that both aspects, viz. his candidature as a member as well as his election as President, DCI, were in issue is also clear from the notice. In the case of an election dispute, unlike the case in consideration before the Supreme Court in *Gorkha Security Services*³⁸, the range of possible actions to be taken by the authority is fairly clear. The allegations were set out in detail in the complaints annexed with the notice wherein the relief sought by the complainants was also stated, to the effect that the election of the petitioner be set aside. On a reasonable and informed reading of the notice dated 13.07.2020, alongwith the complaints forwarded therewith, the petitioner was duly informed of the allegations made against him and the possible action contemplated by the UOI. His reply dated 20.07.2020 also makes it clear that he had understood both these aspects. It contains an elaborate response on the merits of each of the allegations levelled against him and also reflects that he was well aware of the possible consequence that his election as President, DCI would be set aside.

54. For the reasons recorded above, I do not find any infirmity in the proceedings, until the stage of issuance of the notice dated 13.07.2020 to the petitioner.

D. Conduct of the proceedings before the Committee and the UOI

³⁸ Supra (note 3)

55. The further conduct of the proceedings before the Committee and the UOI prior to passing the impugned order must now be examined from the perspective of compliance with the principles of natural justice.

56. A clear thread which runs through our natural justice jurisprudence is that the principles of natural justice are not hide-bound mandates, but flexible tools, to be used pragmatically rather than pedantically. No strait-jacket formula can be applied to all circumstances. The judgments of the Supreme Court in *Karnataka State Road Transport Corporation*³⁹ and *Sudhir Kumar Singh*⁴⁰, cited by the learned ASG, reiterate this principle.

57. In *Sudhir Kumar Singh*⁴¹, the Court was concerned with complaints regarding financial irregularities in the issuance of a tender. Pursuant to an inquiry, the tenders were cancelled, which led to a writ petition being filed by the successful bidder. The writ petition succeeded before the High Court on the grounds of natural justice as the successful bidder had not been given notice of the inquiry being conducted by the State authorities. In appeal, the Supreme Court traced the evolution of the principles of natural justice, particularly with regard to the requirement that the person alleging a violation of principles of natural justice should have suffered some prejudice as a result thereof. It was held that this is particularly relevant in a situation where the factual aspect in issue is not disputed. The Court, in this context, relied upon the Constitution Bench decision in *Managing*

³⁹ Supra (note 10)

⁴⁰ Supra (note 9)

⁴¹ Supra (note 9)

*Director, ECIL vs. B. Karnakumar*⁴² and the Division Bench judgment in *Dharampal Satyapal Ltd. vs. Dy. Comm. Of Central Excise, Gauhati*⁴³. The Court distilled the ratios of the earlier authorities on the subject in the following five conclusions:

“39. An analysis of the aforesaid judgments thus reveals:

- (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*
- (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*
- (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*
- (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case,*

⁴² (1993) 4 SCC 727 [paragraph 30]

⁴³ (2015) 8 SCC 519 [paragraphs 38-45]

and not by the authority who denies natural justice to a person.

- (5) *The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice”*

Examined from this perspective, the Court held that the successful bidder had been kept completely in the dark so far as cancellation of the tender awarded in his favour was concerned, and had suffered prejudice thereby. The judgment of the High Court on this aspect was, therefore, affirmed.

58. Two aspects of these principles are particularly relevant to the present case. One is that compliance with the principles of natural justice need not always require a personal hearing to be granted, and the second is that even when a breach of the principles is found, the Court would examine the facts and circumstances of the case to determine whether a remand to the decision-making authority is required.

59. Applying these principles to the facts of the present case, however, I am of the view that the proceedings before the Committee and the process by which the UOI has passed the impugned order, were both inadequate to meet the requirements of natural justice. The following aspects lead me to this conclusion:

- (a) The petitioner was served with the aforesaid notice dated 13.07.2020 and copies of the six representations made to the UOI against his election. However, in the course of its

proceedings, the Committee also called upon the complainants to verify their complaints and supply documents in support thereof. The complainants did so.⁴⁴ None of these documents were supplied to the petitioner and he was not given any opportunity to respond to the same, either before the Committee or, after the submission of the Report, before the UOI.

- (b) Although learned counsel for the parties joined issue on the question as to whether the petitioner was required to be granted a personal hearing, I find that this question does not require to be adjudicated in the present case. This is because it appears from the Report that the Committee did, in fact, hold oral hearings, but in the absence of the complainants and the petitioner. The Committee perused the record produced by the Under Secretary, Ministry of Health and Family Welfare and the Secretary, DCI, and also examined them orally.⁴⁵ Their statements were recorded in question-answer form. However, these proceedings, including the examination of the officials, took place without the petitioner or the complainants being notified of the same. Significantly, unlike the officials of the UOI and the DCI, neither the complainants nor the petitioner, whose election was in issue before the Committee, were called for any oral hearing at all or given an opportunity to present their statements orally. Such a procedure cannot be appreciated.

⁴⁴ These facts are recorded in paragraphs 4, 6 and 7 of the "Proceedings" section of the Report of the Committee. (Extracted in paragraph 11 above)

⁴⁵ Please see paragraphs 8 and 9 of the "Proceedings" section of the Report of the Committee. (Extracted in paragraph 11 above)

Having commenced the process of oral hearings, all stakeholders were entitled to participate and be given the opportunity to present their submissions. This is the minimum required of fair play in action. Further, the process of examination appears to have been aborted midway due to an indication of the concerned Minister that the Report be submitted without delay. Although the examination of the Secretary, DCI was inconclusive and was adjourned to a later date, it was not, in fact, completed.⁴⁶ These irregularities in the procedure adopted cannot be overlooked in the peculiar facts of this case, when oral hearings had evidently commenced, but did not include all the disputants, including the person whose election itself was the subject matter of the proceedings. It is clarified that I do not intend to decide whether, as a matter of law, the grant of a personal hearing is necessary in every case under Section 5 of the Act.

- (c) The impugned order of the UOI proceeds not just on the basis of the recommendations of the Committee, but records several conclusions in excess thereof. The only definitive finding rendered by the Committee against the petitioner pertains to his eligibility for election under Section 3(d) of the Act. The conclusions recorded by the UOI in paragraphs (ii), (iii) and (iv) of the impugned order do not appear in the Report of the Committee or its recommendations. However, neither was the

⁴⁶ Please see paragraphs 9 to 11 of the “Proceedings” section of the Report of the Committee.
(Extracted in paragraph 11 above)

Report supplied to the petitioner prior to passing of the impugned order, nor was he given any opportunity to make further oral/ written submissions for the consideration of the UOI. The only representation made by the petitioner was his response dated 20.07.2020 to the notice of the Committee dated 13.07.2020. Although the impugned order contains a recital to the effect that the Report and the materials on record have been considered, it does not record any reasons for coming to conclusions beyond those returned by the Committee. The substantive contentions of the petitioner on merits have not been addressed at all. At least in a situation where the UOI intended to go beyond the recommendations of the Committee, it was incumbent upon it to give the parties – the complainants as well as the petitioner – an opportunity of making their submissions before it, and to record its reasons independently.

60. On a consideration of the facts and circumstances of the present case, I am therefore of the view that the conduct of proceedings before the Committee, and the process by which the impugned order was passed, do not reveal adequate compliance with the principles of natural justice.

61. The next question is whether the petitioner has suffered prejudice thereby, for which the impugned order must be set aside and the matter be remanded to the decision-making authority. It is significant that the Committee's findings on various issues refer in detail to the records produced and the statements of the officials

whose examinations were recorded.⁴⁷ As mentioned above, these materials have never been put to the petitioner or the complainants, and they were also not present at the time of examination of the officials. The petitioner had raised substantive legal and factual defences on the merits of the allegations made against him. To the extent that these were dealt with by the Committee, it was *inter alia* on the basis of materials and statements received in his absence. Further, to the extent that the UOI has rendered additional findings against him, these have been made without giving him any further opportunity to make his case, and are inadequately reasoned in the impugned order. Having regard to the nature of the allegations and the defences raised by the petitioner, it cannot be said that compliance with the requirements of natural justice would have been a futile exercise or that the same result would nonetheless have emerged. I am therefore satisfied that the petitioner has been put to disadvantage and prejudice as a result of the aforesaid breaches of natural justice.

62. In such circumstances, the impugned order [except clause (c) thereof⁴⁸] is liable to be set aside and the matter be remanded to the UOI for a fresh decision. As the UOI is the ultimate decision-making authority in the matter, and the Report has already been submitted to it, I am of the view that an opportunity of hearing before the UOI, rather than before the Committee, would be appropriate in the facts of this case. It would also aid in the expeditious disposal of the matter.

⁴⁷ Reference in this regard may be made to paragraphs 1.6 to 1.12, 2.4, 2.5, 3.3, 3.5, 3.7, 4.3 of the findings recorded in Sections 8 to 12 of the Report.

⁴⁸ Clause (c) of the impugned order deals with framing of Regulations to govern the election of the President and Vice-President of DCI.

63. As I propose to remand the matter for a fresh decision, it is not necessary to adjudicate the submissions made on the merits of the dispute. All such questions are left open for decision in accordance with law.

V. Conclusion

64. For the reasons aforesaid, the writ petition is allowed in part. Clauses (a), (b) and (d) of the impugned order of the UOI dated 09.11.2020, which pertain to the petitioner's election and consequential directions, are set aside.

65. The matter is remitted to the UOI with the following directions:

- a. The materials relied upon by the two-member Committee constituted by the UOI [including the transcripts of the statements of officials as recorded by it] be supplied to the complainants [who challenged the election of the petitioner] and to the petitioner. In the event any of the aforesaid parties require a copy of the Report, that too shall be supplied to them by the UOI.
- b. The complainants and the petitioner will be entitled to file their written responses within 15 days thereafter.
- c. The aforesaid parties will be given an opportunity of hearing before the concerned official(s) of the UOI. In the event any of the appearing parties desire to appear by video-conference, they shall be permitted to do so. It shall also be open to the UOI to conduct the hearing entirely by video-conference.

d. The UOI is directed to pass a reasoned order thereafter, dealing with the submissions of the parties. This Court has made no observations on the merits of the disputes.

e. It is made clear that no further show cause notice is required to be served upon the petitioner.

66. It is reiterated that the aforesaid direction for a personal hearing to be given to the petitioner and the complainants is on account of the peculiar fact that oral hearings were, in fact, commenced in this case. Whether a personal hearing is required to be given in all proceedings under Section 5 of the Act is left open for decision in an appropriate case.

67. The writ petition, and all pending applications, are disposed of in the terms aforesaid. There will be no order as to costs.

PRATEEK JALAN, J.

JULY 5, 2021

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